

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 388 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No

ISHVERLAL TULSI AS SALIA

Versus

STATE OF GUJARAT

Appearance:

MR RN SHAH for Petitioner

MR. K.G. SHETH, AGP for Respondents

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 23/07/1999

ORAL JUDGEMENT

1. The present appellant filed a Regular Civil Suit No. 48 of 1973 before the Civil Judge, (SD), Surat, for declaring that the order dated 19th January, 1972 of the Registrar of Cooperative Societies, whereby Shri P.N. Patel, who was junior to the plaintiff in gradation list

was promoted, was illegal, null and void and further declaring that the replies dated 15th July, 1972 and 22nd September, 1972 to his representation for promoting him were also illegal and null and void. Further it was

prayed by the plaintiff that if he be considered as promoted from 19th January, 1972, and the amount of difference of Rs.40/- per month be awarded to him, which comes to Rs.400/-. It was further prayed that the Registrar, Cooperative Societies, be directed to issue a promotion order to the plaintiff immediately and give him posting.

2. The plaintiff was employed in Cooperative Department in the Scale of Rs. 325 - 575 from 2nd February, 1967 and his junior came to be promoted earlier to him and hence the suit was filed. The trial court after hearing the parties and appreciating the evidence on record held that the plaintiff had no legal right to claim promotion for which he was not entitled to be considered as promoted from 19th January, 1972. This is so because a Departmental Promotion Committee was appointed and it was decided that the promotion was to be given on merits and efficiency of the employees. Since the plaintiff was not found meritorious or efficient to be promoted at that juncture, he was not promoted. The trial court accepted the say of the department.

3. Thereupon, being aggrieved, the plaintiff filed a Regular Civil Appeal No. 249 of 1977, which came to be decided by the Extra Assistant Judge, Surat, on 17th October, 1979, whereby the appeal was dismissed and the judgment of the trial court was confirmed except on the

point of the issue of Court fees, wherein the appellant plaintiff was directed to pay the deficit court fees stamp of Rs.11.65ps on the plaint as well as on the Memo of Appeal.

3. Being aggrieved, this Second Appeal is filed by the original plaintiff. Both the courts below have rightly come to the conclusion that the plaintiff was not found meritorious or efficient for the promotion and, therefore, the question of communicating the adverse remarks to the plaintiff and relying on them would not arise in the Second Appeal as substantial questions of law. On the question of law as well as on facts, both

the courts below have come to the conclusion that the plaintiff was not meritorious or efficient to be promoted along with Mr. P.N. Patel, who is junior to the plaintiff. The appellate court as well as trial court have gone into the merits of the case and the evidence properly and when there is concurrent findings of facts by both the courts below, no interference is called for in this Second Appeal. In this view of the matter, this Second Appeal stands dismissed with no order as to costs.

p.n.nair